Appl. No. 10/632,279
Atty. Docket No. AA539MC
Amdt. dated July 24, 2006
Reply to Office Action of February 22, 2006
Customer No. 27752

REMARKS

Claims 1, 2, 4, 5 and 9-23 are pending in the present application.

Claim 1 has been amended to further define the present invention wherein the composition comprises from about 0.1% to about 10% of a polyoxyalkylene derivative wherein the polyoxyalkylene derivative is a polyoxyethylene/polyoxypropylene block copolymer. Support for the present invention is found in the specification at page 6, lines 3-5.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Claim Rejections – 35 USC § 103

1) Claims 1, 2, 4, 5 and 9-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 2002/0051798 to Koike et al ("798) in view of EP 027 730 (EP 730). Applicants respectfully traverse this rejection.

In order to establish a prima facie cast of obviousness, the Examiner must show that (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there is a reasonable expectation of success, and (3) all of the limitations of the claims are taught or suggested in the prior art (M.P.E.P. § 2143).

However, all of the limitations of the claims are not taught or suggested in '798 in view of EP 730.

'798 discloses a gommage cosmetic composition comprising a water soluble polymer and a substance that is liquid at 25°C (excluding water). Further '798 discloses that the cosmetic composition may comprise a component which generates heat upon contact with water for the purpose of giving users a warmed feeling in addition to the effect of the gommage. Examples of such a component include various inorganic salts such as magnesium sulfate, calcium chloride and magnesium chloride. However, as the Office Action has asserted, '798 fails to teach from about 0.1% to about 10% of a polyoxyalkylene derivative wherein the polyoxyalkylene derivative is a

polyoxyethylene/polyoxypropylene block copolymer, as now incorporated into Claim 1 of the present invention.

EP 730 teaches cosmetic compositions for hair or skin treatment, comprising heat generating compounds when brought into contact with water. Among the heat generating compounds EP 730 teaches fatty alcohols, alkylene glycols and polyoxyalkylene derivatives. The Examiner has asserted that it would have been obvious for one of ordinary skill in the art to use the pluronic or any other suitable polyalkylene derivatives as heat generating agents in the compositions of '798 because EP 730 teaches the above polyoxyalkylene derivatives are preferable as heat generating compounds and suggests that the heat generating compounds give an excellent finishing and cleansing effect to the consumer upon application, which results in a comfortable hot feeling. The Examiner has asserted that one of ordinary skill in the art would have expected at least a synergistic effect with a combination of the heat generating salts of '798 and the polyoxyethylene and polyoxypropylene copolymer of EP 730.

However, EP 730 teaches the use of polyalkylene derivatives as heat generating compounds in an amount of 50% - 95% by weight, based on the total cosmetic composition (Claim 3). Specifically, on page 7, line 20 to page 8, line 5, EP 730 discloses the substance which generates the heat is generally employed in an amount more than 50% by weight and preferably in an amount more than 60% by weight of the total cosmetic composition. If the ratio of the said substances in the cosmetic composition increases, accordingly the ratio of cleaner decreases, and generally, the said substance is employed in an amount under 95%, by weight, further preferably in an amount under 80% by weight, and more preferably in an amount of 70% by weight or more based on the total cosmetic composition. EP 730 further states: If the amount is less than 50% by weight, satisfactory heat generating effect is not achieved.

The present invention, as amended, requires from about 0.1% to about 10% of a polyoxyalkylene derivative wherein the polyoxyalkylene derivative is a polyoxyethylene/polyoxypropylene block copolymer. This requirement is neither taught nor suggested by EP 730. Further, EP 730 teaches away from the present invention, by stating that it is undesirable to have heat generating compound, such as polyoxyethylene and polyoxypropylene derivative, in an amount less than 50% by weight. Clearly, one of

skill in the art, would not be motivated by the teachings of EP 730, to add from about 0.1% to about 10% of a polyoxyalkylene derivative wherein the polyoxyalkylene derivative is a polyoxyethylene/polyoxypropylene block copolymer, to the composition of '798.

Therefore, all of the limitations of the present claims are not taught or suggested in the prior art. Further, one of skill in the art would not be motivated by EP 730, to add less than 50% of a heat generating compound, as EP 730 teaches that if the amount is less than 50% by weight, satisfactory heat generating effect is not achieved. Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

2) Claims 17-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Koike et al ('798) in view of EP 027 730 (EP 730) as applied to claims 1, 2, 4-5 and 9-16 and further in view of U.S. 6,540,989 to Janchitraponvej ('989). Applicants respectfully traverse this rejection.

Claims 20-22 require an amidoamine and an acid.

'798 and EP 730 fail to teach the claimed amidoamine.

As stated in the remarks above, all of the limitations of the present claims are not taught or suggested in the prior art, '798 in view of EP 730. Further, one of skill in the art would not be motivated by EP 730, to add less than 50% of a heat generating compound, as EP 730 teaches that if the amount is less than 50% by weight, satisfactory heat generating effect is not achieved. Applicants have shown that there is therefore no prima facie case of obviousness and respectfully request withdraw of the rejection.

As Claims 17-23 depend from Claim 1, Applicants would like to apply the remarks above to this further 103(a) rejection as well. Therefore, Applicants have demonstrated there is no prima facie case of obviousness of '798 in view of EP 730, and further in view of '989 (as applied to claims 17-23).

Applicants have shown that there is therefore no prima facie case of obviousness and respectfully request withdraw of the rejection.

Conclusion

Applicants have made an earnest effort to place their application in proper form and distinguish their claimed invention from the prior art which was applied in the February 22, 2006 Office Action. WHEREFORE, consideration of this application, consideration of the accompanying claims and claim amendments submitted herewith, withdrawal of the rejections under 35 U.S.C § 103, and allowance of Claims 1, 2 4, 5, and 9-23 are respectfully requested.

Respectfully submitted,
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